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Supreme Court of the United States

October Term, 1949

No. 54

54

UNITED STATES OF AMERICA,
ex rel. ELLEN KNAUFF,

Appellant,

against

EDWARD J. SHAUGHNESSY, Acting District Director of Immigration and Naturalization Service,

Appellee.

APPELLANT'S BRIEF

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Supreme Court of the United States

October Term, 1949

No. 54

UNITED STATES OF AMERICA, ex rel. ELLEN KNAUFF,

Appellant,

against

EDWARD J. SHAUGHNESSY, Acting District Director of Immigration and Naturalization Service,

Appellee.

APPELLANT'S BRIEF

All references to folios, unless otherwise indicated.

Opinions Below

The opinion of the Court of Appeals for the Second Circuit is reported in 173 F. (2d) 599. The opinions of the District Court upon the original hearing (R. 28-35) and upon re-argument (R. 54) have not been reported.

Jurisdiction

The order of the Court of Appeals for the Second Circuit was entered on the 11th day of March, 1949. The petition for certiorari was filed on April 18, 1949. Certiorari was granted on May 2, 1949, 336 U. S. 971, 69 S. Ct. 941. The jurisdiction of this court is invoked under Section 1254 (1) of Title 28, U. S. C.

Questions Presented

The appellee invokes the provisions of Sections 175.53 to 175.57 of Title 8, Code of Federal Regulations, in justification of appellant's exclusion from the United States, without any legal process. The following questions are therefore presented in this case:

(1) Are the provisions of Sections 175.53 to 175.57 of Title 8, C. F. R., valid and in harmony with the Constitution and statutes of the United States? Are in particular said regulations in harmony with the Fifth Amendment to the Constitution, with the Passport Act of 1918 (22 U. S. C. 223), and the Proclamation of the President No.2523 as amended by Proclamation 2850? It is contended that Sections 175.53 to 175.57, of Title 8, C. F. R. are unauthorized under the said Amendment to the Constitution, said Passport Act and Presidential Proclamations, and that, even if authorized thereunder the provisions of the War Bride Act (8 U. S. C. 232-236) take precedent over said Regulations, 8 C. F. R. 175.53-175-57. The War Bride Act makes the admission of qualified war brides mandatory.

(2) Is the appellant, being within the United States and being the wife of an employee of the Government of the United States who is stationed abroad, entitled to access to a Naturalization Court pursuant to Section 312 of the Nationality Act of 1940 (8 U. S. C. 712)? May she under said Act offer proof of her good moral character and attachment to the principles of our Constitution, or may the respondent prevent such naturalization proceeding by arbitrarily refusing to process the preliminary petition for naturalization and by preventing thereby the filing of the petition for naturalization? The appellant contends that respondent has no right so to exclude her from naturalization and the naturalization courts.

The courts below have answered all these questions contrary to the contentions of the appellant.

Statement

The appellant, a woman of the age of thirty-three years, of German-Jewish origin (110), applied on August 14, 1948, at the Port of New York for admission to the United States as a war bride (17). On that day she was taken to Ellis Island where she was temporarily excluded from the United States. On October 6, 1948, the Attorney General ordered the appellant finally excluded from the United States (18). No reason for such exclusion was stated when this decision was communicated to appellant's husband on October 8, 1948 (Ex. 13, 148-150), nor was appellant ever granted the statutory admission hearing before a board of special inquiry of the Immigration and Naturalization Service (25).

Appellant, who is of Jewish origin, tried early to escape from Nazi prosecution. Soon after Hitler's ascent to power she went to Czechoslovakia, where she became married to a Czech with the name of Boxhornova. This marriage was no success and ended in a divorce. When Nazi Germany swallowed up Czechoslovakia in 1938-1939, appellant continued her flight for safety and in 1939 found refuge in Great Britain (110).

Being grateful to Britain for her hospitality and desirous of fighting the Nazis, appellant enlisted in the Royal Air Force where she served from January 1, 1943 to May 30, 1946. She was honorably discharged as a flight sergeant with the highest character rating awarded by the Royal Air Force (Ex. 11, p. 45).

Thereafter the petitioner was at once employed by the Occupation Forces in Germany (30) of the War Depart-

ment of the United States. There the petitioner served first in the Civil Censorship Division until it was dissolved in the beginning of August, 1947 (111).. Exhibit 12 (142-147) shows that after serving in said division for more than a year (38), Ellen Boxhornova (143, right column) was awarded the European—African—Middle-Eastern—Theater Ribbon for faithful and satisfactory service. Exhibit 1 (37-39) is a letter of the Adjutant of the Civil Censorship Division of August 6, 1947, certifying appellant's satisfactory conduct and her efficiency rating of "Very Good". Exhibit 6 (61-63), Exhibit 5 (58-59), Exhibit 7, p. 23), Exhibit 10 (76-81) are further testimonials showing that the petitioner, up to the time she departed for the United States, rendered services to our Military Government in Frankfurt am Main and that these services were recognized by her superiors as "excellent". Said testimonials describe petitioner as "discreet, capable, and interested in her work". The decision below concludes from the record (61): "Her official record in so far as appears is excellent."

The appellant on February 28, 1948, married Mr. Kurt W. Knauff. Mr. Knauff is a citizen of the United States and an honorably discharged veteran of our armed forces (9). Mr. Knauff's discharge papers (p. 5) show the battles and campaigns in Europe in which he participated and the medals he received. He is now serving our Military Government in Frankfurt am Main as a civilian employee (113).

Mr. Knauff married the appellant with the consent of the Commanding General of the Frankfurt military post of the U. S. Army. Before this consent was given a thorough check was made by all service commands and intelligence agencies (31).

Being the wife of an honorably discharged veteran, the appellant qualifies for the special benefits of the War Bride

Act (p. 49, *infra*). In the teeth of this statute she was excluded from the United States without any legal or administrative process. Being the wife of an employee of our government stationed abroad, the appellant qualifies for immediate naturalization under Section 312 of the Nationality Act (p. 31, *infra*). Her preliminary petition was duly filed with the District Director of Immigration and Naturalization. However she was denied by said administrative authorities naturalization by refusal to process her petition as provided by law, and this was done although naturalization is a court proceeding.

Appellant's husband sought by writ of habeas corpus court review of appellant's exclusion, on the ground that it was arbitrary and void of any element of due process. The writ of habeas corpus was allowed on October 9, 1948 (4-6). After argument and re-argument, the writ was dismissed on January 3, 1948) by an order (162-165) of the United States District Court for the Southern District of New York. Judge Hulbert wrote two opinions, the first one dated December 4, 1948 (82-105), the second one dated December 27, 1948 (160-161).

The Court of Appeals, upon appeal, affirmed Judge Hulbert's order by decree dated March 11, 1949, 173 F. 2d 599.

The appellant from her arrival in the United States had been held at Ellis Island until May 4, 1949, as her application for release *pendente lite* had been denied by both courts below.

On May 4th, 1949, pursuant to an order dated May 2nd, 1949, made by Mr. Justice Robert H. Jackson of this court, appellant, upon posting a bond of one thousand dollars, was released from custody.

POINT I

It was error on the part of the courts below to sanction the exclusion of a war bride from the United States by ukase of the Attorney General, without a hearing of any kind, without any fact finding procedure, without confronting her with charges or evidence of any kind, without permitting her the assistance of counsel.

A. The Due Process Clause of the Fifth Amendment to the Constitution protects the privileges under the War Bride Act of an honorably discharged veteran and his spouse.

Ellen Knauff, the appellant herein, is the alien wife of an honorably discharged war veteran of our army. When she applied for admission to the United States as a war bride in August, 1948, she was whisked to Ellis Island. On October 8, 1948, Mrs. Knauff's husband, Mr. Kurt W. Knauff, was informed by Mr. Zucker, an employee of the Immigration and Naturalization Service, in a letter set forth at length on folios 148 to 150 of the record, as follows:

> "Information was sent to this office to the effect that an order has been entered directing that Mrs. Ellen Knauff be denied admission to the United States and that she be returned to the country whence she came."

These are the entire proceedings administered to this war bride, which the courts below have sanctioned as legal, which are here claimed to be arbitrary, tyrannical and unconstitutional.

Mr. Kurt W. Knauff, husband of appellant, personally came to this country to assist his wife. He instituted the

present proceedings. The writ of habeas corpus herein was issued upon Mr. Knauff's petition. It is emphasized that Mr. Knauff personally is seeking redress in this proceeding although his name does not appear in the title. This court, in disposing of this matter, is requested to consider Mr. Knauff a party to this appeal as well as to all proceedings below.

The War Bride Act, Public Law 271 of 1945, provides that:

> "alien spouses * * * of United States citizens * * * having an honorable discharge certificate from the armed forces of the United States during the Second World War shall, if otherwise admissible under the immigration laws * * *, be admitted to the United States."

The language of the statute is clear and unambiguous. "Shall" be admitted means *Must!*

The petitioner, therefore, under Public Law 271 had to be admitted, unless inadmissible under the Immigration Laws.

The grounds for the exclusion of aliens are set forth in Section 3 of the Immigration Act of February 5, 1917, as amended, — 8 U. S. C. 136, 137. Anarchists, opposers of organized government, advocates of violence, publishers of subversive doctrines and similar elements are thus excluded. To these have been added by act of Congress of May 25, 1948, "aliens who the Attorney General knows or has reason to believe seek to enter the United States for the purpose of engaging in activities which will endanger the public safety of the United States" (Public Law 552, *infra, p.* 51). This new law was obviously designed to exclude Fascists, Nazis, Communists, and similar political

agents, who come here for the purpose of spreading obnoxious doctrines.

No such charges were made against the appellant, and she therefore does not fall under any of the statutory exclusion grounds.

In order to justify appellant's exclusion, the appellee stated that she was excluded by order of the Attorney General pursuant to Section 175.57 of Title 8 of the Code of Federal Regulations (*infra*, p. 68). Said section holds that an alien may be excluded from the United States by the Attorney General and the Secretary of State, and that no hearing by a board of special inquiry shall be held until after the case has been reported to the Attorney General and such hearing is directed by the Attorney General. Said section further holds that the Attorney General may deny the alien hearings if he determines that the alien is excludable under one of the categories set forth in Section 175.53 "on the basis of information of a confidential nature, the disclosure of which would be prejudicial to the public interest." The decision below, page 64, holds that appellant was excluded and ordered deported to Germany as a result of the procedure provided in Section 175.57 and in exercise of the authority there given the Attorney General.

With this holding issue is taken here on the ground that Section 175.57, in giving the Attorney General power to exclude aliens without a hearing or any kind of process, is unconstitutional.

Amendment V of the Constitution provides:

> "No person shall * * * be deprived of life, liberty, or property, without due process of law."

These principles apply to immigration proceedings. The Supreme Court in *Yamataya* v. *Fisher*, 1903, 189 U. S. 86, 23 S. Ct. 611, 614 held with respect to immigration proceedings:

"But this court has never held, nor must we now be understood as holding, that administrative officers, when executing the provisions of a statute involving the liberty of persons, *may disregard the fundamental principles that inhere in 'due process of law' as understood at the time of the adoption of the Constitution.* One of these principles is that no person shall be deprived of his liberty without opportunity, at some time, to be heard, before such officers, in respect of the matters upon which his liberty depends, * * * Therefore, it is not competent for * * * any executive officer * * * arbitrarily to cause an alien * * * to be taken into custody and deported without giving him all opportunity to be heard upon the questions invading his right to be and remain in the United States. No arbitrary power can exist where the principles involved in due process of law are recognized."

While the *Yamataya* case involved the deportation of aliens who had in fact entered, this court applied the same doctrine in an exclusion case: *Chin Yow* v. *U. S.*, 1908, 208 U. S. 8, 28 S. Ct. 201, where it held that an alien arriving by boat from overseas suffers an impairment of his liberties if arbitrarily denied entry.

Similarly, Mr. Justice Stone, speaking for this Court in *Lloyd Sabaudo Societa* v. *Elting*, 1932, 287 U. S. 329, 335-336, 53 St. Ct. 167, held:

"The action of the Secretary is, nevertheless, subject to some judicial review, as the courts below held. The courts may determine whether his action is within his statutory authority, compare *Gonzales* v. *Williams*, 192 U. S. 1; *Gegiow* v. *Uhl*, 239 U. S. 3, whether there was any evidence before him to support his determination, compare *Vajtauer* v. *Com-*

missioner of Immigration, 273 U. S. 103, and whether the procedure which he adopted in making it satisfies elementary standards of fairness and reasonableness, essential to the due administration of the summary proceeding which Congress has authorized. Compare *Kwock Jan Fat* v. *White*, 253 U. S. 454; *Tang Tun* v. *Edsell*, 223 U. S. 673; *Chin Yow* v. *United States*, 208 U. S. 8, 12; *The Japanese Immigrant Case*, 189 U. S. 86, 100, 101; see *United States ex rel. Iorio* v. *Day*, 34 F. (2d) 920; *Whitfield* v. *Hanges*, 222 Fed. 745."

That fair hearings are a constitutional requirement in immigration procedure has been held in

U. S. ex rel. Brant v. *District Director*, 1941, 40 F. Supp. 371;

Johnson v. *Tertzag*, 1924, 2 F. 2d 40, D. C. Mass.;

Kwock Jan Fat v. *White*, 1919, 253 U. S. 454, 464, 40 S. Ct. 566.

Ex Parte Petkos, 1913, 212 F. 275, D. C. Mass.; reversed on other grounds 214 F. 978;

U. S. ex rel. Reimann v. *Martin*, 193 F. 795;

Gung You v. *Nagle*, 1929, 34 F. 2d 848;

Tod v. *Waldman*, 1924, 266 U. S. 113; 45 S. Ct. 85.

O'Connell ex rel. Foo v. *Ward*, 1942, 126 F. 2d 615.

Inasmuch as relator's right to enter and her husband's right to have her admitted (127, 128) under the War Bride Act were determined in this case without the statutory hearing, without any hearing at all, after denial of counsel, without any notice to the alien of the charges that were made against her and without the offering of any evidence against her (17, 18, 25), the proceedings of the Attorney General are void and of no effect.

Occasionally court decisions have held that aliens not yet admitted to the United States have no standing in our courts to challenge the constitutionality of Acts of Congress.* To this we reply that we attack no act of Congress but a departmental regulation. Furthermore, the theory that an alien never admitted to the United States may not invoke the protection of the U. S. Constitution is, we believe, untenable. The contrary was recently decided by the U. S. Court of Appeals for the District of Columbia in

> *Eisentragen* v. *Forrestal*, 1949, 174 F. 2d 961, and *Flick* v. *Johnson*, 1949, 174 F. 2d 983.

In the *Eisentrager* case Eisentrager applied for a writ of habeas corpus against the Secretary of Defense on the ground that he, a German National, was held illegally by the United States Army at Landsberg Prison in Germany. The district court dismissed the writ for lack of jurisdiction. The Court of Appeals for the District of Columbia reversed and remanded.

In sustaining jurisdiction the Court of Appeals held (963 to 965):

> "1. We think that any person who is deprived of his liberty by officials of the United States, acting under purported authority of that Government and who can show that his confinement is in violation of a prohibition of the Constitution, has a right to the writ. This conclusion necessarily follows from the following premises. *First.* The Fifth Amendment, by its terms, applies to 'any person'. *Second.* Action of Government officials in violation of the Constitution is void. This is the ultimate essence of the present controversy. *Third.* A basic and inherent function of the judicial branch of a govern-

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*Kaminer v. *Clark*, March 7, 1949, D. C. D. C., unreported, appelle's brief in opposition to certorari, p. 11.

ment built upon a constitution is to set aside void action by government officials, and so to restrict executive action to the confines of the constitution. In our jurisprudence, no Government action which is void under the Constitution is exempt from judicial power. *Fourth.* The writ of habeas corpus is the established, time-honored process in our law for testing the authority of one who deprives another of his liberty, — 'the best and only sufficient defense of personal freedom.' The writ is the indispensable implementation of constitutional guarantees in respect to personal liberty.

At common law the writ issued to test the validity of confinement under English authority beyond the seas, although the decided cases dealt with British subjects.

• • • • •

We think that constitutional prohibitions apply directly to acts of Government, or Government officials, and are not conditioned upon persons or territory. That is the nub of this whole matter. If the action of Government officials be beyond their constitutional power, it is for that reason a nullity. No more need be proven to establish its invalidity. Absent constitutional power, neither the objective nor the subject matter of an act is material. Whether given circumstances place a given action outside an apparent constitutional prohibition and so within constitutional power, is a different question, to be established by proof and not to be considered unless raised and supported. That is a matter of decision and not of judicial jurisdiction. For these reasons, we think that a distinction between citizens and aliens cannot be made in respect to the applicability of constitutional restrictions upon the power of government.

This case shows that the Fifth Amendment protects aliens as well as citizens, and residents as well as non-residents. The Flick case shows the limitations of this rule. Flick, also a German national confined by army authorities in Germany, was denied relief because the Military Tribunal that tried and convicted him derived its power from an international convention and therefore was not acting as an organ of the government of the United States. It follows that an alien whose liberty is illegally impaired may invoke the protection of the Constitution of the United States if he is held by officers or agents of the United States' government deriving their authority from laws of the United States. There can be no doubt that the appellant herein qualifies for relief by habeas corpus.

It should further be considered that one of the petitioners in this proceeding is Mr. Kurt W. Knauff, husband of the alien, a citizen of the United States. Together with his wife, the appellant, Mr. Knauff is a party here in pressing the challenge of the constitutionality of 8 C. F. R. 175.57. As a citizen and a veteran he appears entitled to raise the constitutional question.

The War Bride Act of Dec. 28, 1945, was a part of that legislation that Congress enacted to show the returning soldiers the appreciation of a grateful nation. In the interpretation of the Act it should be considered that appellant's exclusion is a blow not only to herself but to her husband whose discharge certificate (p. 5 of record) is "a testimonial of Honest and Faithful Service to this country." Mr. Knauff has participated to the full in this proceeding. He was the one who signed the petition for Habeas Corpus (7 to 12). Mr. Knauff, by the act of the Attorney General, is being deprived of his wife. He is being deprived of his wife without due process of law, without any process of law, by administrative fiat. Mr. Knauff has a right to insist that his wife's admissibility be deter-

mined in a proceeding bearing the characteristics of due process.

Mr. Knauff now turns to this High Tribunal and clamors for its determination whether the Attorney General may place an honorably discharged veteran of World War II before the awful choice between his country and his wife; whether the Attorney General may do so without any process of law, on the basis of secret information—that petitioner has alleged to be spurious, mendacious, and based upon a foul denunciation (11, 32).

If this court should hold that aliens arriving from abroad are not protected by the due process clause of the Fifth Amendment to the Constitution, it would create a most ominous precedent; if it should sanction the flimsy proceedings upon which this appellant is excluded from the United States, we would have fallen back into conditions under which witches were hanged in Massachusetts in 1692 upon "spectral evidence." An agent of the Federal Bureau of Investigation makes a confidential report to the Department of Justice. In this report he states that the appellant was a paid agent of Czechoslovakia. That the source of this heresay report is unknown, that appellant clamors that it is false and mendacious avails her nothing, that appellant and her husband, by their front line services, show better merits for the Allied cause in the last war than the Attorney General himself, fails to move him. Upon such evidence the witches of Salem were hanged but ninety years before the Constitution was adopted. To exclude such farce of judicial or government procedure from our commonwealth the Founding Fathers undertook to guarantee that No Person, whether white or black, whether citizen or alien, whether resident or non-resident, shall be deprived of life or liberty or property without Due Process of Law.

Let us not now cast away this priceless inheritance of an enlightened age.

B. The war bride, seeking admission in addition to being protected by constitutional due process, is entitled to statutory due process.

The proceedings concerning the exclusion of aliens to e United States are statutory. The basic provisions are ntained in 8 U. S. C. 152, reading:

> "Every alien who may not appear to the examining immigrant inspector at the port of arrival to be clearly and beyond a doubt entitled to land shall be detained for examination in relation thereto by a board of special inquiry. In the event of rejection by a board of special inquiry, in all cases where an appeal to the Attorney General is permitted by this chapter, the alien shall be so informed and shall have the right to be represented by counsel or other adviser on such appeal."

Reference is further made to 8 U. S. C. 153, from which e following language is quoted:

> "Such boards shall have authority to determine whether an alien who has been duly held shall be allowed to land or shall be deported. All hearings before such boards shall be separate and apart from the public, but the immigrant may have one friend or relative present under such regulations as may be prescribed by the Attorney General. Such boards shall keep a complete permanent record of their proceedings and of all such testimony as may be produced before them; and the decisions of any two members of the board shall prevail, but either the alien or any dissenting member of the said board may appeal through the district director of immigration and naturalization at the port of arrival and the Commissioner of Immigration and Naturalization to the Attorney General, and the taking of such appeal

shall operate to stay any action in regard to the final disposal of any alien whose case is so appealed until the receipt by the district director of immigration and naturalization at the port of arrival of such decision *which shall be rendered solely upon the evidence adduced before the board of special inquiry.* In every case where an alien is excluded from admission in the United States, under any law or treaty now existing or hereafter made, the decision of a board of special inquiry adverse to the admission of such alien shall be final, unless reversed on appeal to the Attorney General." (Emphasis supplied.)

In the present case the statutory manner of proceeding was entirely disregarded. The relator was not placed before a board of special inquiry; she was refused a lawyer; she was briefly questioned by an official with regard to her identity and finally advised that she was excluded from the United States (25). No exclusion grounds were officially stated (Ex. 13, 148-150).

The judges below find a justification for the relator's exclusion and for the proceedings administered to her in sections 175.53 to 175.57 of Title 8, C. F. R., which are set forth *infra*. pp. 63 to 67.

These regulations need careful analysis.

Section 175.53 sets forth the classes of aliens whose entry shall be deemed prejudicial to the United States. Subsection (a) terms prejudicial the entry of aliens who belong to one of the classes specified in the act of October 16, 1918, as amended. This act is identical with section 137 of Title 8, U. S. C. It excludes anarchists, members of subversive organizations, and other similar categories which were discussed on pages 7 and 8 of this brief. It appears, from the record that the classes specified in section 175.53 (a), Title 8, C. F. R., do not apply to this petitioner.

Similarly, subsections (b), (c), (d), (e), (f), and (g), of section 175.53 do quite obviously not apply. Neither does subsection (h) apply: It refers to 22 U. S. C. Sup. 228 and 229, which sections authorize the consular officers to refuse visas to aliens who seek to enter the United States for the purpose of engaging in activities which will endanger the public safety of the United States. As this section is addressed to consular officers, it gives no power of exclusion to the Attorney General and it was for the purpose of closing this gap that Congress enacted Public Law 552 of 1948 (*infra*, p. 51). The legislative history of Public Law 552, printed in full below (pp. 51-53), shows that Congress had in mind filling this gap. The letter of Mr. McGregor, Assistant to the Attorney General, to Representative Michener, of June 20, 1947, *infra* pp. 53-54, therefore expressly states:

> "However, if an alien succeeds in concealing such purpose from the diplomatic or consular officer and obtains a visa or other travel document, he cannot legally be denied admission on the ground of his purpose after he reaches the United States."

It is therefore proved that the relator cannot have been excluded by the Attorney General under subsection (h) of section 175.53 which refers to a power not vested in the Attorney General. If this relator on the other hand was sought to be excluded under Public Law 552, she had a right to a trial before a Board of Special Inquiry, which trial was denied her.

Subsection (i) refers to alien enemies. We need not go into this section further, for it has not been invoked against the relator. It might also be mentioned that, the alien enemy act of 1798 is not an "Immigration Law". An alien spouse of German nativity must quite obviously be admitted under the War Bride Act which expressly holds

that war brides may solely be excluded on the exclusion grounds of the "Immigration Laws".

Subsection (j) is not applicable.

Subsection (k) is a catch-all clause which is invoked by the government in this case. It reads:

> "(k) Any alien who is not within one or more of the classes defined in paragraphs (a) to (j), inclusive, but in whose case circumstances of a similar character may be found to exist, which render the alien's admission prejudicial to the interests of the United States, which it was the purpose of the act of June 21, 1941 (55 Stat. 252; 22 U. S. C. Sup. 223) to safeguard."

It is submitted that this clause is so vague, ambiguous, and void of precise meaning, that it cannot be considered valid. If valid it would authorize the Government to do what it pleases and set aside the statutory admission proceeding at pleasure.

That vague, ambiguous and indefinite statutes are void has always been held by our courts. Reference is made to decisions like *A. B. Small Co.* v. *Amer. Sugar Refining Co.*, 1925, 267 U. S. 233, 45 S. Ct. 295, where an act prohibiting the exaction of unreasonable prices for necessaries was held void because indefinite, whether taken as a civil regulation or as a criminal statute. It is entirely impossible to define who an alien is who is not in the classes (a) to (j) "but in whose case circumstances of a similar character may be found to exist." The requirements of definiteness established by the courts with reference to statutes must, *a fortiori*, be applied with increased strictness to the rules and regulations of administrative agencies.

In the present case we noticed that Congress in 8 U. S. C. 137 has defined with definiteness the classes of aliens excludable for political reasons. Section 175.53 (k) now adds a new class of excludable persons. Creating new classes of excludable persons is in itself beyond administrative powers.

This new class of excludable aliens is in addition improperly, i.e. too vaguely, defined, and so comprehensive that it makes 8 U. S. C. 137 illusory.

Summing up the previous argument, the conclusion is reached that the relator falls under none of the classes of aliens whose entry pursuant to Section 175.53 shall be deemed prejudicial to the United States on the grounds that sections (a) to (j) do not apply and that section (k) is without meaning and beyond statutory power.

Sections 175.54 to 175.56 are not applicable.

Section 175.57 (a) is invoked by the court below as the basis for the proceeding applied to the exclusion of this alien. This section (*infra*, p. 68) purports to authorize the temporary exclusion of any alien if "it appears that he is or may be excludable under any of the categories set forth in section 175.53". Such alien, the section further provides, "shall be excluded and deported unless the Secretary of State is satisfied that the admission of the alien would not be prejudicial to the interests of the United States."

In the present case, the Secretary of State was not consulted. The government return expressly states (18):

> "2. On October 6, 1948, the Assistant Commissioner of Immigration and Naturalization recommended that the relator's temporary exclusion be made permanent without the right of a hearing be-

fore a Board of Special Inquiry under the provisions of 8 C. F. R. 175.57. On the same day, this recommendation was adopted by the Attorney General, who ordered relator excluded from the United States."

It appears that the Attorney General acted on his own, acted beyond the powers that his own rules purported to give him. On this reasoning alone the exclusion order herein must fall.

That under Rule 175.57 (a)—if indeed it shall not be invalid for indefiniteness—the Secretary of State and not the Attorney General must exclude the alien, has been held in a recent decision of Judge Holland of the U. S. District Court for Florida, in the matter of Visic (Nov. 1948). This decision is annexed hereto, pp. 69-72, ~~below,~~ as part of Appendix II.

The power to exclude aliens vested under these rules in the Secretary of State has recently been transferred to the Attorney General. See Proclamation of the President No. 2850, of August 19, 1949, *infra* p. 62. This change of rules can obviously not apply to this appellant, who was excluded before proclamation No. 2850 went into effect. The constitution condemns *ex post facto* laws.

Section 175.57 (b) purports to give the Attorney General power to deny the alien a hearing by a board of special inquiry and an appeal therefrom "if the Attorney General determines that he is excludable under one of the categories set forth in section 153.53 on the basis of information of a confidential nature, the disclosure of which would be prejudicial to the public interest."

This section has been violated in several ways. First, as shown before, appellant is not being excluded under, and does not belong to any, of the classes set forth in section

175.53). Secondly, there is no determination by the Attorney General that the appellant is excludable on confidential information, the disclosure of which would be contrary to the public interest. Inasmuch as the Attorney General wrote about this matter to his friend "Joe" (70-75), it would seem that he did not deem the matter confidential. Thirdly, there is no statutory basis for section 175.57, which is the arbitrary and unauthorized product of government officials desirous of legislating.

The conclusion is that there is no basis for the proceeding adopted herein by the government, that the bypassing of the boards of special inquiry was unauthorized, and that the writ herein should have been sustained because the procedure prescribed by law to determine the alien's admissibility was not followed.

C. 8 C. F. R. 175.53 to 175.57 do not apply to war brides and are unauthorized by statute.

The courts below held that sections 175.53 to 175.57, Title 8, C. F. R. are authorized by 22 U. S. C. 223 and Presidential Proclamation 2523. It is submitted that the learned judges are in error. 22 U. S. C. 223, set forth verbatim *infra* p. 42, is the so-called Passport Act of 1918, as amended. It applies, as its language shows, to times of war. Relator argues that, as far as she is concerned, the war is at an end. Reference is made to that part of the War Bride Act which says that

> "For the purpose of this Act, the Second World War shall be deemed * * * to have ceased upon the termination of hostilities as declared by the President * * *".

The President declared the termination of hostilities by proclamation 2714 on December 31, 1946 (*infra*, p. 61). From this fact it is deduced that with respect to war brides

no war powers can be invoked by the government. No war bride, since Dec. 31, 1946, can be excluded under powers flowing from the Passport Act of 1918.

Furthermore, 22 U. S. C. 223 (a) authorize the President to prescribe "reasonable rules and regulations." It does not authorize the government to invent additional exclusion grounds. Inasmuch as 8 C. F. R. 175.53 (k) and 8 C. F. R. 175.57 establish new grounds for exclusion, they are void. The Attorney General, as he purported to do, had no power to make excludable such aliens "in whose case circumstances of a similar character may be found" (175.53 (k)) and his attempt to act in this case under this provision is contrary to statute, not authorized by 22 U. S. C. 223.

Section 175.57 therefore is no "reasonable" rule or regulation. It does not carry the statute into effect; it is an attempt to legislate.

The Attorney General was not authorized by 22 U. S. C. 223 (a) to abolish the statutory boards of special inquiry. He was given no power to supersede the Immigration Laws.

The President under 22 U. S. C. 223 (a) issued Proclamation 2523 (*infra*, p. 55). Said proclamation under (3), second paragraph states (*infra*, p. 58):

> "No alien shall be permitted to enter the United States if it appears to the satisfaction of the Secretary of State that such entry would be prejudicial to the interests of the United States as provided in the rules and regulations hereinbefore authorized to be prescribed by the Secretary of State, with the concurrence of the Attorney General."

It is apparent that the President gave the power to exclude under said proclamation to the Secretary of State and

not to the Attorney General and that the Attorney General's acts in this matter are not authorized by said Proclamation. If the government desires to argue that 8 C. F. R. 175.53—175.57 were promulgated by the Secretary of State and the Attorney General jointly, the answer is that the Secretary of State has no power to delegate his powers to the head of another government agency, and that in fact section 175.57 (a) did not delegate the power to exclude to the Attorney General, but retained it with the Secretary of State. Judge Holland in the Visic decision* came to the same conclusion (*infra*, pp. 69-72). The recent change of this regulation by Proclamation 2850 (*infra*, p. 62) cannot impair the status of appellant *ex post facto*.

It has been pointed out above that section 5 of the War Bride Act, *infra*, p. 50, provides that for the purpose of this act the second world war has been terminated with the presidential proclamation of cessation of hostilities, on Dec. 31, 1946. From this it is deduced that 22 U. S. C. 223 cannot be applicable to a war bride, for section 223 expressly holds that the powers therein defined are granted solely:

(1) When the United States is at war;

(2) During the existence of the emergency proclaimed by the President on May 27, 1941;

(3) Whenever there exists a state of war between two or more states.

The War Bride Act shows that as to war brides and their right to enter we are to be deemed at peace. The emergency proclaimed by the President on May 27, 1941, was terminated by the outbreak of the second world war

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*Visis v. *Dever*, D. C. S. D. Fla., 1948, No. 2712 —— M —— Civil, *infra*, p. 69.

into which the emergency merged. There is no war between two or more states in existence. For this reason again 22 U. S. C. 223 cannot be applicable to this case.

The courts below rejected this argument on the ground that this Court held in *Ludecke* v. *Watkins*, 1948, 335 U. S. 160, 68 U. S. 1429, that we are still at war with Germany. It is submitted that the *Ludecke* case is not applicable to the present situation, as Ludecke was not a war bride and the construction of the War Bride Act was not attempted in that case.

Appellant Ellen Knauff should therefore have been given the statutory admission hearing under section 8, U. S. C. 152 and 153.

D. No act of Congress authorizes the Attorney General to exclude aliens without a hearing.

The passport act of 1918 has been in effect for twenty-four years, without being officially interpreted as authorizing the denial of a hearing to arriving aliens. During all this time it was, what the name implies, an enactment authorizing the President to require aliens to present certain documents if they desire to enter.

The 1941 amendment to the Passport Act made no material change. It authorized the President to make a proclamation that it was necessary to impose restrictions and prohibitions in *addition* to those otherwise provided. The President was further given power to make it unlawful for an alien to enter "except under such reasonable rules, regulations, and orders and subject to such limitations and exceptions as the President shall prescribe."

Presidential Proclamation No. 2523 was issued on the basis of the National Emergency proclaimed on May 27,

1941. It requires aliens to present passports and excludes aliens whose entry the Secretary of State finds prejudicial.

It will be observed that no provision is made in the statute or the proclamation for the suspension of hearings heretofore granted for over twenty years under the statute to arriving aliens. In the light of the history of the statute, and the administrative practice thereunder, *in the absence of explicit language, there should be a strong presumption that Congress did not intend to authorize the denial of a hearing to an arriving alien. Congress did not explicitly authorize the President to deny a hearing nor did the Presidential Proclamation contain any such explicit authorization.*

The authorization to deny a hearing is contained in 8 C. F. R. 175.57b. It is submitted that the regulations exceed the authority delegated by the statute and the original proclamation (2523).

Instead of imposing *additional* conditions on entering aliens, the regulations do two things: First, they exclude those already excludable under existing law as in the case of Communists and those who would endanger public safety; secondly, they eliminate hearings under 8 C. F. R. 175.57. If the statute and proclamation authorize the suspension of hearings, then the Secretary of State is authorized to nullify or abrogate all our immigration laws. Nowhere is there any intimation that Congress intended to grant such untrammelled authority. Exclusion hearings are granted when a subversive is denied entry under the Act of October 16, 1918 (8 U. S. C. 137). But where he is suspected of subversion and denied entry under the regulation which incorporates that same statute (8 C. F. R. 175.53) he may be denied a hearing under 8 C. F. R. 175.57(b) on the ground that *ex parte* information against him is confidential.

As recently as April 12, 1948, the United States Court of Appeals for the District of Columbia in the case of *Wilson* v. *Federal Communications Commission*, 170 Fed. 2(d) 793, 802, cited the *Japanese Immigrant* case (*Yamataya* v. *Fisher*), *supra* p. 8, as authority for determining that a hearing was constitutionally required under a section of the Federal Communications Act which did not specifically provide for a hearing.

It is submitted that in the light of a long history affording hearing to immigrants applying for admission to the United States newfangled regulations eliminating hearings should not be tolerated in the absence of express statutory authority. No such express authority is contained in the Passport Act of 1918, as amended. From the cited cases and numerous others to the same effect it is apparent that the construction placed upon the Passport Act and Proclamation 2523 is one which the courts should hold improper on the ground that such construction would render the statute unconstitutional.

E. 22 U. S. C. 223 (Passport Act) and 8 C. F. R. 175.53 to 175.57 are void to the extent that they contain unconstitutional delegations of legislative and executive powers.

The Supreme Court in *A. L. A. Schechter Poultry Corporation* v. *United States*, 295 U. S. 495, 529, 55 S. Ct. 837, 843, laid down the principles governing the Delegation of Legislative Powers as follows:

> "We recently had occasion to review the pertinent decisions and the general principles which govern the determination of this question. *Panama Refining Company* v. *Ryan*, 293 U. S. 388, 55 S. Ct. 241, 79 L. Ed. 446. The Constitution provides that 'All legislative powers herein granted shall be vested in

a Congress of the United States, which shall consist of a Senate and House of Representatives.' Article 1, §1. And the Congress is authorized 'To make all Laws which shall be necessary and proper for carrying into Execution' its general powers. Article 1, §8, par. 18. The Congress is not permitted to abdicate or to transfer to others the essential legislative functions with which it is thus vested. We have repeatedly recognized the necessity of adapting legislation to complex conditions involving a host of details with which the national Legislature cannot deal directly. We pointed out in the Panama Refining Company Case that the Constitution has never been regarded as denying to Congress the necessary resources of flexibility and practicality, which will enable it to perform its function in laying down policies and establishing standards, while leaving to selected instrumentalities the making of subordinate rules within prescribed limits and the determination of facts to which the policy as declared by the Legislature is to apply. But we said that the constant recognition of the necessity and validity of such provisions, and the wide range of administrative authority which has been developed by means of them, cannot be allowed to obscure the limitations of the authority to delegate, if our constitutional system is to be maintained. Id., 293 U. S. 388, page 421, 55 S. Ct. 241, 79 L. Ed. 446."

In application of these principles the court concluded with respect to section 3 of the Recovery Act (541):

"It supplies no standards for any trade, industry, or activity. It does not undertake to prescribe rules of conduct to be applied to particular states of fact determined by appropriate administrative procedure. Instead of prescribing rules of conduct, it authorizes the making of codes to prescribe them.

> For that legislative undertaking, section 3 sets up no standards, aside from the statement of the general aims of rehabilitation, correction, and expansion described in section 1. In view of the scope of that broad declaration and of the nature of the few restrictions that are imposed, the discretion of the President in approving or prescribing codes, and thus enacting laws for the government of trade and industry throughout the country, is virtually unfettered. We think that the code-making authority thus conferred is an unconstitutional delegation of legislative power."

If we examine 22 U. S. C. 223 and the proclamation (2523, *infra*, p. 55) and regulations (175.53 to 175.57 Title 8, C. F. R., *infra*, p. 64) issued thereunder, the conclusion is inescapable that the rule making authority conferred thereby, or assumed thereunder, is an unconstitutional delegation of power.

22 U. S. C. 223 lays down the rule that during a war it shall be unlawful

> "For any alien to * * * enter the United States except under such reasonable rules * * * as the President shall prescribe."

Does this provision authorize the government to prescribe new substantive rules of exclusion and set up a procedure that abolishes the alien's right to a fair hearing and due process of law? This is exactly what the rules attempt to do. While 8 C. F. R. 175.53 (a) refers to persons excludable by act of Congress (8 U. S. C. 137) subsection (k) purports to exclude any alien:

> "who is not within one or more of the classes defined in paragraphs (a) to (j), inclusive, but in

whose case circumstances of a similar character may be found to exist, which render the alien's admission prejudicial to the interests of the United States * * *"

The instant statute merely authorized the imposition of additional conditions upon entry. No standards were set, nor were the functions of the President delineated in any way. We have to look beyond the statute to the Presidential Proclamation to find any standards whatever, and even the standard found there conveys no suggestion as to the limits of the power to exclude aliens or the manner of its exercise. It therefore seems clear that the instant statute falls within the unconstitutional prescription noted above.

There is no definition of the "circumstances of a similar character" in 8 C. F. R. 175.53 (k). Arbitrary action of the executive power is sanctioned in that provision, and the Attorney General claims for himself thereunder the right to do what he pleases. This appellant, a woman, has rendered three and one-half years of faithful services in the British Army, she has served our government for over two years and earned praise and appreciation, but the Attorney General finds a justification of her exclusion in section 175.53 (k). He says that she reported on American personnel assigned to the Civil Censorship division in Germany!

The utter baselessness of this charge has been set forth in the application for re-argument on folios 122 to 125 which need not be repeated here. The personnel of the Civil Censorship Division was no state secret. It was publicized by the Civil Censorship Division itself (Exh. 12, pp. 48 and 49). The Civil Censorship Division has been abolished for a year and a half; during this time the army authorities continued the employment of appellant and are

still willing to employ her; but the Attorney General determines that reporting what everybody knows is an act "similar" to attempting to overthrow the government by force!

Appellant's specific denial that she gave such information to anybody (32) was never weighed in any hearing; appellant's statement that she was the victim "of a foul denunciation by a woman jealous of her husband" found no open ear. The Attorney General overrode all laws of procedure on the basis of section 175.57, which he construes as giving him power to follow his caprice. If indeed the regulations purport to give the Attorney General the powers he is assuming in this case, they are unconstitutional delegations of powers and void.

POINT II

It was error on the part of the courts below to permit the appellee to fustrate appellant's efforts to institute and carry through naturalization proceedings.

One of the independent grounds on which the writ of habeas corpus in this case was sought to be sustained was that relator filed her preliminary form for petition for naturalization on November 23, 1948 (125, and Ex. 14, p. 51), but that respondent failed and refused to process the same and by confining her to Ellis Island denied her admission to the naturalization court (126).

The courts below disposed of this issue by deciding that there is no right to citizenship until the petitioner is lawfully in the country (160). The courts below therefore denied petitioner's demand to direct the respondent to call the relator for an immediate hearing in which she may formally file the petition (127).

It is submitted that the learned judges are in error.

A. The appellant is entitled to immediate naturalization.

The legal basis for appellant's demand for naturalization is section 312 of the Nationality Act of 1940 (8 U. S. C. 712) reading:

> "An Alien, whose spouse is (1) a citizen of the United States, (2) in the employment of the Government of the United States, or of an American institution of research recognized as such by the Attorney General, or an American firm or corporation engaged in whole or in part in the development of foreign trade and commerce of the United States, or a subsidiary thereof, and (3) regularly stationed abroad in such employment, and who is (1) in the United States at the time of naturalization, and (2) declares before the naturalization court in good faith an intention to take up residence within the United States immediately upon the termination of such employment abroad of the citizen spouse, may be naturalized upon compliance with all requirements of the naturalization laws, with the following exceptions:
>
> (a) No declaration of intention shall be required; and
>
> (b) No prior residence within the United States or within the jurisdiction of the naturalization court or proof thereof shall be required. Oct. 14, 1940, c. 876, Title I, Subchap. III, Sec. 312, 54 Stat. 1145."

It is apparent on the face of this section 312 that appellant qualifies for immediate naturalization. Her husband is in the employ of the U. S. government abroad. Appellant is in the United States; she desires to declare her intention

to take up residence. All requirements of the statute are met; there is no reason discernible why relator should be refused her day in court on her naturalization petition.

That appellant "is" in the United States is doubly clear since her release from custody upon direction of Mr. Justice Jackson.

The naturalization procedure is set forth in the Nationality Act of 1940.

Sec. 301 (8 U. S. C. 701) provides:

> "(a) Exclusive jurisdiction to naturalize persons as citizens of the United States is hereby conferred upon the following specified courts: District Courts of the United States * * * The jurisdiction of all the courts herein specified to naturalize persons shall extend only to such persons resident within the respective jurisdictions, except as otherwise specified provided in this Act.
>
> * * * * *
>
> (d) A person may be naturalized as a citizen of the United States in the manner and under the conditions prescribed in this Act, and not otherwise."

It should be pointed out at this time that the second sentence of section 301 (a) is not in the way of appellant's petition, for section 312 (*supra*, p. 31) expressly provides that "(b) no prior residence within the United States or within jurisdiction of the naturalization court or proof thereof shall be required." That appellant does not reside within the jurisdiction of the District Court for the Southern District of New York is therefore no reason not to process the petition or to deny it.

Sec. 307 (a) Nat. Act (8 U. S. C. 707a) provides:

> "(a) No person, except as hereinafter provided in this Act, shall be naturalized unless such petitioner, (1) immediately preceding the date of filing the petition for naturalization has resided continuously within the United States for at least five years and within the State in which the petitioner resided at the time of filing the petition for at least six months, (2) has resided continuously within the United States from the date of the petition up to the time of admission to citizenship, and (3) during all the periods referred to in this subsection has been and still is a person of good moral character, attached to the principles of the Constitution of the United States, and well disposed to the good order and happiness of the United States. (54 Stat. 1142; 8 U. S. C. 707.)"

These requirements again are dispensed with for aliens spouses of citizens employed by our government and stationed abroad, as section 312 shows.

The procedure to be followed in naturalization matters is set forth in section 327 as of the Nationality Act.

The preliminary examination of the applicant for naturalization is in the hands of the Commissioner of Immigration. Section 327 (b) of the Nationality Act (8 U. S. C. 727 (b) provides:

> "(b) The Commissioner, with the approval of the Attorney General, shall make such rules and regulations as may be necessary to carry into effect the provisions of this chapter and is authorized to prescribe the scope and nature of the examination of petitioners for naturalization as to their admissibil-

> ity to citizenship for the purpose of making appropriate recommendations to the naturalization courts. Such examination, shall be limited to inquiry concerning the applicant's residence, good moral character, understanding of and attachment to the fundamental principles of the Constitution of the United States, and other qualifications to become a naturalized citizen as required by law, and shall be uniform throughout the United States (54 Stat. 1151; 8 U. S. C. 727).

With respect to this provision it should be mentioned that the Commissioner made the Rules and Regulations. They are contained in sections 363.1 to 363.4, Title 8, C. F. R. Sections 363.3 and 363.4 of said rules provide:

> "363.3. Certificate of arrival to be filed with petition for naturalization. Each petitioner for naturalization who entered the United States after June 29, 1906, shall, unless specifically exempted by the Nationality Act of 1940 from the requirement of a certificate of arrival, file with his petition for naturalization a certificate of arrival issued in accordance with §363.1. Such certificate of arrival shall be filed with the petition for naturalization at the time the petition is filed. The certificate of arrival issued to support a declaration of intention in accordance with §363.2, may be used in support of the petition for naturalization. Nationality Act of 1940, sec. 332 (c), 54 Stat. 1156.)"

> "363.4. Petitioners who are exempt from requirement of certificate of arrival. The following persons may file petitions for naturalization without the issuance of a certificate of arrival: (a) persons who entered the United States for permanent residence on or prior to June 29, 1906; and (b) petitioners under

sections 317 (a) (b) (c), 318, 322, 323, 324, and 325 of the Nationality Act of 1940. (Nationality Act of 1940, secs. 317 (a) (b) (c), 318, 322, 323, 324, 325 and 332 (c), 54 Stat. 1146, 1147, 1148-1150, 1156.)"

It is quite obvious, on the basis of these rules, why the appellee refused to process the present petition, for the appellant is not exempted by said rules from the procurement of a certificate of arrival, section 312 of the Nationality Act not being mentioned in section 363.4 of C. F. R.

It is submitted that while this regulation explains why the appellee looks with disfavor at appellant's application for citizenship, his refusal to process this application is not made legal thereby. The regulation is not in harmony with the statute and therefore is without legal authority under section 727 (b) which expressly provides that but such regulations shall be made "as may be necessary to carry into effect the provisions of this chapter." The regulation, in leaving out section 312 in 8 C. F. R. 363.4, does not carry the statute into effect.

For the reason set forth the appellant is entitled to her day in court and the appellee should be directed to process her petition for naturalization so that the case may be calendared and appellant bring proof of her good moral character, loyalty and attachment to our institutions. Where the Immigration Service arbitrarily refuses to bring a petition for naturalization before the court, the court has power to order it to do so:

Czuczka v. *Rifkind*, 1947, 160 F. (2d) 308; See also Sections 333 and 334 Nationality Act (733, 734 of 8 U. S. C.).

The question here raised, whether lawful entry is a prerequisite of applying for citizenship pursuant to section

312 Nationality Act, has never been decided by the courts. It ought to be mentioned however that an opinion exists which bears the name of the present Justice of the Supreme Court, the Honorable Robert H. Jackson, who rendered said opinion when he was Attorney General. (Opinions of the Attorney General Vol. 40, No. 29, *infra*, p. 73). The Court will notice that this opinion comes to a conclusion opposite to the one here reached and in harmony with the decisions below.

Despite the great respect which the opinion of so eminent a jurist as Mr. Justice Jackson commands, it should be pointed out that he did not have the benefit of argument of counsel when writing his opinion and that he was in the position, as Attorney General, that the Department of Justice had already taken a stand on the point in controversy by promulgating the Rule in 8 C. F. R. 363.4 which was discussed above. The Department of Justice, of course, had a tendency to justify the position previously taken. A final determination of the problem can only be made by this court.

The main point in the Attorney General's reasoning is that section 332 of the Nationality Act sets forth in general as a requirement for naturalization "proof of legal entry in the United States for permanent residence." It seems necessary to take issue with this premise. Section 332 of the Nationality Act (*infra*, p. 44) contains a sample of a petition for naturalization, together with the direction that the "petition shall contain *substantially** the following averments by such applicant". The point is here made that the list of items set forth in §332 that the petition must contain is that of a normal naturalization case. Item 14, e. g., contains the statement that the applicant declared his intention to become a citizen of the United Sates on a certain date. Since section 312 Nationality Act exempts the relator herein from the requirement of "first papers", they are not

*Emphasis supplied.

necessary in her case. Similarly item 11, referring to "lawful entry for permanent residence" is not applicable, because section 312 merely demands a declaration of the applicant that she intends "to take up residence within the United States immediately upon termination of such employment abroad of the citizen spouse." Section 312 expressly holds therefore that the applicant thereunder is *not* expected to take up permanent residence. Sec. 312, thereby expressly drops the requirement of item 11 of sect. 332 as far as applicants in appellant's position are concerned.

Mr. Attorney General Jackson further argues that "the other exemptions in section 312 being expressly granted," it is his opinion that an exemption from lawful entry should not be read into the act by implication.

The answer to this is that section 312, not by implication, but by most pertinent direct language exempts the alien spouse from the requirement of legal entry by requiring only that she "is (1) in the United States at the time of the naturalization." There is no doubt that petitioner "is in the United States." Said section further holds "no prior residence within the United States * * * or proof thereof shall be required." If now a certificate of legal entry for permanent residence should be considered a necessary requirement for petitions for naturalization under §312 Nat. Act, proof would be required of previous residence, which the statute expressly rules out. If no prior residence is required at the time of the application, it can only mean that applicant need not be a resident at the time of the application and that all that is necessary is that, somehow, she is actually in the United States. Appellant meets this requirement.

Certificates of arrival are issued only to persons entering the United States for permanent residence (§§328(c), 329, Nat. Act., infra, pp. 41, 42). It is contended, e. g., that an alien spouse of a government employee stationed abroad is eligible for immediate naturalization when in transit through the United States or in the United States as a visitor. §312 is expressly worded to meet this condition. It is therefore fanciful and arbitrary and contrary to law to require from applicants under §312 certificates of arrival.

B. The appellant is entitled to immediate processing of her preliminary petition for naturalization.

It has been stated at length that the appellant is entitled to immediate naturalization. However, his quesion need not be decided at the present stage of her case. This court, it is hoped, will agree with the legal reasoning under point II B, supra, but if it does not, it seems to be unquestionable that a legitimate legal issue exists. It is contended that the administrative agencies have no right and no power to decide such legal issue by passive resistance to the preliminary petition of this appellant, i.e., by simply refusing to process the petition and to give appellant a chance of raising the legal issues in the District Court. Appellant therefore prayed the courts below to direct the District Director of Naturalization to calendar her naturalization case so that appellant may file her petition. The courts and not the appellee, will then finally pass upon the legal issues of appellant's petition for naturalization.

These deductions are in harmony with judicial determination. Thus it was held in *Tutun* v. *U. S.*, 1926, 270 U. S. 568, 46 S. Ct. 425, 427:

> "The opportunity (to become a citizen) having been conferred by the Naturalization Act (34 Stat.

596), there is a statutory right in the alien to submit his petition and evidence to a court, to have that tribunal pass upon them, and, if the requisite facts are established, to receive the certificate."

See also *Schwimmer* v. *United States*, 27 F. (2) 742, 744.

Reference is further made to the decision of the District Court for the Northern District of California, in re Linklater, 3 F (2) 691, where it was held by Partridge, D. J., (695):

> "Lastly, the naturalization department makes certain suggestions as to its powers. I do not feel called upon to discuss those questions, except to negative the claim that such an examiner is a "master." His powers are clearly administrative, and not judicial in any sense. I am equally clear that such examiners have no power or authority to prevent a man from filing his petition under any circumstances."

C. The naturalization issue may be raised in this habeas corpus proceeding.

It is obvious that the naturalization proceeding gives the appellant an opportunity to prove her good moral character and her loyalty to this country in court, before a learned and impartial judge, while the admission procedure takes place before administrative agencies that are composed of men less learned and less gifted than our judges. If appellant can convince the judge of the naturalization court of her loyalty, her detention which at once be ended upon her becoming a citizen of the United States. The appellee, by frustrating the progress of the naturalization procedure, therefore deprives the appellant of one of the means provided for her by law to end her detention. Habeas Corpus is the time honored remedy to obtain relief from illegal detention.

It is further contended that where a right to naturalization exists and at the same time an alien is deportable, the naturalization proceeding takes precedent and must be determined before any deportation may take place. The court proceeding, being of higher dignity should not be frustrated by the administrative agencies."

This has been held in U. S. ex rel. *Walther* v. *District Director of Immigration and Naturalization*, 1949, 175 F. (2d) 693.

In this case an honorably discharged veteran had petitioned for naturalization. The Immigration and Naturalization Service, for reasons not disclosed in the decision, was unimpressed by the distinguished war services of an alien and ordered the veteran deported for illegal entry. The Court of Appeals for the Second Circuit, by Frank C. J., held (694):

> "Appellee on oral argument in this court, did not dispute appellant's contention that that section removes an illegal entry as a barrier to naturalization. We do not now so decide. But we think that that question should be canvassed in the naturalization proceedings. If that section is held to remove that barrier, and if appellant otherwise satisfies the the provisions of the statute, the deportation order should be quashed.
>
> Accordingly, we vacate the order dismissing the habeas corpus writ; the habeas corpus petition is to remain undecided in the district court until the naturalization proceedings is concluded; the deportation order and warrant are meanwhile stayed."

It is respectfully submitted that the above decision is squarely applicable to the facts of this case. Mrs. Knauff is

sought to be deported before obtaining a naturalization hearing. The latter should be carried through before her deportability can be determined.

CONCLUSION

The decision below should be reversed, the writ sustained, appellant released from custody and the appellee directed to grant the appellant admission hearings before a Board of Special Inquiry and to process the petition for naturalization so that it may come up for an early hearing in the United States District Court for the Southern District of New York.

New York City, September 20, 1949.

Respectfully submitted,

GUNTHER JACOBSON,
Attorney for Appellant.

APPENDIX I

Statutes and Regulations

(Shorter citations of other statutes are set forth verbatim at the proper place in the points below.)

Passport Act of 1918 as amended in 1941, Title 22, U. S. C., section 223:

> "§223. *War-time restrictions generally.* When the United States is at war or during the existence of the national emergency proclaimed by the President on May 27, 1941, or as to aliens whenever there exists a state of war between, or among, two or more states, and the President shall find that the interests of the United States require that restrictions and prohibitions in addition to those provided otherwise than by sections 223-226 of this title be imposed upon the departure of persons from their entry into the United States, and shall make public proclamation thereof, it shall, until otherwise ordered by the President or Congress, be unlawful (as amended June 21, 1941, c. 210, § 1, 55 Stat. 252)
>
> "(a) For any alien to depart from or enter or attempt to depart from or enter the United States except under such reasonable rules, regulations, and orders, and subject to such limitations and exceptions as the President shall prescribe;"
>
> • • •

Sections 328 and 329 Nationality Act of 1940 (8 U. S. C. 728, 729).

Sec. 328. (a) The Commissioner shall cause to be made, for use in complying with the requirements of this chapter,

a registry of each person arriving in the United States after the effective date of this Act, of the name, age, occupation, personal description (including height, complexion, color of hair and eyes, and fingerprints), the date and place of birth, nationality, the last residence, the intended place of residence in the United States, the date and place of arrival of said person, and the name of vessel or other means of transportation, upon which said person arrived. (54 Stat. 1151-1152; 8 U. S. C. 728.)

REGISTRY OF ALIENS WHERE NO RECORD OF ADMISSION FOR PERMANENT RESIDENCE, ENTRY PRIOR TO JULY 1, 1924

(b) Registry of aliens at ports of entry required by subsection (a) of this section may be made as to any alien not ineligible to citizenship in whose case there is no record of admission for permanent residence, if such alien shall make a satisfactory showing to the Commissioner, in accordance with regulations prescribed by the Commissioner, with the approval of the Attorney General, that such alien—

(1) Entered the United States prior to July 1, 1924;

(2) Has resided in the United States continuously since such entry;

(3) Is a person of good moral character; and

(4) Is not subject to deportation. (54 Stat. 1152; 8 U. S. C. 728.)

RECORD OF REGISTRY DEEMED LAWFUL ADMISSION FOR PERMANENT RESIDENCE

(c) For the purposes of the immigration laws and naturalization laws an alien, in respect of whom a record of registry has been made as authorized by this section, shall

be deemed to have been lawfully admitted to the United States for permanent residence as of the date of such alien's entry. (54 Stat. 1152; 8 U. S. C. 728.)

CERTIFICATE OF ARRIVAL
ISSUED UNDER REGULATIONS UPON APPLICATION TO THE COMMISSIONER

SEC. 329. (a) The certificate of arrival required by this chapter may be issued upon application to the Commissioner in accordance with regulations prescribed by the Commissioner, with the approval of the Attorney General, upon the making of a record of registry as authorized by section 328 of this Act. (54 Stat. 1152; 8 U. S. C. 729.)

LAWFUL ENTRY FOR PERMANENT RESIDENCE REQUISITE FOR VALID DECLARATION OF INTETION

(b) No declaration of intention shall be made by any person who arrived in the United States after June 29, 1906, until such person's lawful entry for permanent residence shall have been established, and a certificate showing the date, place, and manner of arrival in the United States shall have been issued. It shall be the duty of the Commissioner or a Deputy Commissioner to cause to be issued such certificate. (54 Stat. 1152; 8 U. S. C. 729.)

Sec. 332 Nationality Act of 1940, Sec. 732, Title 8, U. S. C.

SEC. 332. (a) An applicant for naturalization shall, not less than two nor more than seven years after such declaration of intention has been made, make and file in the office of the clerk of a naturalization court, in duplicate, a sworn petition in writing, signed by the applicant in the applicant's own handwriting, if physically able to write, and duly verified by witnesses, which petition shall contain substantially the following averments by such applicant. (54 Stat. 1154; 8 U. S. C. 732.)

CONTENTS OF PETITION FOR NATURALIZATION

(1) My full, true and correct name is ..... (full, true name, without abbreviation, and any other name which has been used, must appear here).

(2) My present place of residence is ..... (number and street), ... (city or town), ... (county), ... (State).

(3) My occupation is .....

(4) I am ..... years old.

(5) My personal description is: Sex .....; color ....., complexion ....., color of eyes ....., color of hair ....., height ..... feet ..... inches, weight ..... pounds; visible distinctive marks .....; race .....; present nationality .....

(6) I was born on ..... (month, day and year), in ..... (city or town), ... (county, district, province, or state), ... (country).

(7) I am ..... married; the name of my wife or husband is .....; we were married on ..... (month, day, and year), at ..... (city or town), ... (state or country); he or she was born at .....(city or town), ... (county, district, province, or state), ... (country), on ..... (month, day, and year); entered the United States at..... (city or town), ... (State), on ..... (month, day, and year), for permanent residence in the United States, and now resides at ..... (city or town), ... (state or country).

(8) I have ..... children; and the name, sex, date, and place of birth, and present place of residence of each of said children who is living are as follows: .....

(9) My last place of foreign residence was ..... (city or town), ... (county, district, or province), ... (country).

(10) I emigrated to the United States from ..... (city or town), ... (country).

(11) My lawful entry for permanent residence in the United States was at ..... (city or town), ... (State), under the name of ....., on ..... (month, day, and year), on the ..... (name of vessel or other means of conveyance), as shown by the certificate of my arrival attached to this petition.

(12) I have ..... been absent from the United States, having departed therefrom on ..... (dates of departures), from the port or ports of ....., upon the following vessels or other means of conveyance: ..... (names of vessels or conveyances upon departures); and returned to the United States on ..... (dates of return to the United States), at the port or ports of ...., upon the following vessels or other means of conveyance: ..... (names of vessels or conveyances upon return).

(13) I have resided continuously in the United States of America for the term of five years at least immediately preceding the date of this petition, to wit, since ....., and continuously in the State in which this petition is made for the term of six months at least immediately preceding the date of this petition, to wit, since .....

(14) I declared my intention to become a citizen of the United States on ..... (month, day, and year), in the ..... (name of court) Court of ....., at ..... (city or town), ... (State).

(15) I have ..... heretofore made petition for naturalization number ....., on ..... (month, day, and year), at ..... (city or town), ... (county), ... (State), in the ..... (name of court), and such petition was dismissed or denied by that Court for the following reasons and causes to wit: ....., and the cause of such dismissal or denial has since been cured or removed.

(16) I am not an anarchist, nor a disbeliever in or opposed to organized government, nor a member of or affiliated with any organization or body of persons teaching disbelief in or opposition to organized government.

(17) I am attached to the principles of the Constitution of the United States and well disposed to the good order and happiness of the United States.

(18) It is my intention in good faith to become a citizen of the United States, and to reside permanently therein.

(19) It is my intention to renounce absolutely and forever all allegiance and fidelity to any foreign prince, potentate, state, or sovereignty of whom or which at this time I am a subject or citizen.

(20) Attached hereto and made a part of this, my petition for naturalization, are my declaration of intention to become a citizen of the United States (if such declaration of intention be required by the naturalization law), a certificate of arrival from the Immigration and Naturalization Service of my said lawful entry into the United States

for permanent residence (if such certificate of arrival be required by the naturalization law), and the affidavits of the two verifying witnesses required by law.

(21) Wherefore, I, petitioner for naturalization, pray that I may be admitted a citizen of the United States of America, and that my name be changed to .....

(22) I, aforesaid petitioner, being duly sworn, depose and say that I have (read) (heard read) this petition and know that the same is true of my own knowledge except as to matters herein stated to be alleged upon information and belief, and that as to those matters I believe it to be true; and that this petition is signed by me with my full, true, and correct name. So help me God: ..... (full, true, and correct name of petitioner). (54 Stat. 1154-1156; 8 U. S. C. 732.)

AVERMENTS AND PROOF OF OTHER MATERIAL FACTS REQUIRED

(b) The applicant's petition for naturalization, in addition to the averments required by subsection (a) of this section, shall include averments of all other facts which may be material to the applicant's naturalization and required to be proved upon the hearing of such petition. (54 Stat. 1156; 8 U. S. C. 732.)

CERTIFICATE OF ARRIVAL AND DECLARATION OF INTENTION TO BE ATTACHED AND MADE A PART OF PETITION AT TIME OF FILING

(c) At the time of filing the petition for naturalization there shall be filed with the clerk of court a certificate from the Service, if the petitioner arrived in the United States after June 29, 1906, stating the date, place, and manner of petitioner's arrival in the United States, and the declaration of intention of such petitioner, which certificate and declaration shall be attached to and made a part of said petition. (54 Stat. 1156; 8 U. S. C. 732.)

FINAL COURT ACTION ON PETITIONS FOR NATURALIZATION ONLY ON COURT RULING

(d) Petitions for naturalization may be made and filed during the term time or vacation of the court and shall be docketed the same day as filed, but final action thereon shall be had only on stated days, to be fixed by rule of the court. (54 Stat. 1156; 8 U. S. C. 732.)

Aliens-Spouses and Minor Children of Citizens in Armed Forces

(War Bride Act)

CHAPTER 591—PUBLIC LAW 271

[H. R. 4857]

An Act to expedite the admission to the United States of alien spouses and alien minor children of citizen members of the United States armed forces.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That:

Notwithstanding any of the several clauses of section 3 of the Act of February 5, 1917, excluding physically and mentally defective aliens, and notwithstanding the documentary requirements of any of the immigration laws or regulations, Executive orders, or Presidential proclamations issued thereunder, alien spouses or alien children of United States citizens serving in, or having an honorable discharge certificate from the armed forces of the United States during the Second World War shall, if otherwise admissible under the immigration laws and if application for admission is made within three years of the effective date

of this act, be admitted to the United States: Provided, That every alien of the foregoing description shall be medically examined at the time of arrival in accordance with the provisions of section 16 of the Act of February 5, 1917, and if suffering from any disability which would be the basis for a ground of exclusion except for the provision of this Act, the Immigration and Naturalization Service shall forthwith notify the appropriate public medical officer of the local community to which the alien is destined: PROVIDED FURTHER, That the provisions of this Act shall not affect the duties of the United States Public Health Service so far as they relate to quarantinable diseases.

SEC. 2. Regardless of section 9 of the Immigration Act of 1924, any alien admitted under section 1 of this Act shall be deemed to be a nonquota immigrant as defined in section 4 (a) of the Immigration Act of 1924.

SEC. 3. Any alien admitted under section 1 of this Act who at any time returns to the United States after a temporary absence abroad shall not be excluded because of disability or disabilities that existed at the time of his admission.

SEC. 4. No fine or penalty shall be imposed under the Act of February 5, 1917, except those arising under section 14, because of the transportation to the United States of any alien admitted under this Act.

SEC. 5. For the purpose of this Act, the Second World War shall be deemed to have commenced on December 7, 1941, and to have ceased upon the termination of hostilities as declared by the President or by a joint resolution of Congress.

Approved December 28, 1945.

CHAPTER 338—PUBLIC LAW 552 OF 1948
[1878]

An Act to amend the immigration laws to deny admission to the United States of aliens who may be coming here for the purpose of engaging in activities which will endanger the public safety of the United States.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That:

Section 1 (a) of the Act of October 16, 1918, as amended (40 Stat. 1012; 41 Stat. 1008-9; 54 Stat. 673; 8 U. S. C., 137), is further amended by inserting the following clause immediately after the clause "Aliens who are anarchists;": "or aliens who the Attorney General knows or has reason to believe seek to enter the United States for the purpose of engaging in activities which will endanger the public safety of the United States".

Approved May 25, 1948.

LEGISLATIVE HISTORY OF PUBLIC LAW 552 OF 1948

Senate Report No. 1199, Apr. 30, 1948

[To accompany H.R. 1878]

House Report No. 1286, Jan. 29, 1948

[To accompany H.R. 1878]

The Senate Report repeats in substance the House Report

Senate Report No. 1199

The Committee on the Judiciary, to whom was referred the Bill (H. R. 1878) to amend the immigration laws to deny admission to the United States of persons who may be coming here for the purpose of engaging in activities which will endanger the public safety of the United States, do now report the bill favorably to the Senate with amendments, and recommend that the bill as amended do pass.

Purpose of the Bill

The purpose of the bill is to give the Attorney General the same power to exclude aliens who might be coming to the United States for the purpose of engaging in activities which would endanger the public safety as is presently vested in the Secretary of State to refuse visas to the same class of persons coming to the United States.

The purpose of the amendments is to make it clear that the power to be exercised under the bill is related to aliens only and not to persons other than aliens. It is highly improbable that the power vested under the terms of the bill

could under the Constitution of the United States be used to exclude citizens.

Statement of Facts

The pertinent facts which prompt the passage of the bill are set forth in a letter dated June 20, 1947, from the then assistant to the Attorney General, to the chairman of the Committee on the Judiciary of the House of Representatives, which letter reads as follows:

June 20, 1947.

Hon. Earl C. Michener,
Chairman, Committee on the Judiciary,
House of Representatives,
Washington, D. C.

My Dear Mr. Chairman: This is in response to your request for the views of the Department of Justice relative to a bill (H.R. 1878) which would amend the immigration laws to exclude from admission to the United States persons who the Attorney General knows or has reason to believe seek to enter the country for the purpose of engaging in activities which would endanger the public safety.

Under existing law (22 U. S. C. 228), whenever an American diplomatic or consular officer knows or has reason to believe that an alien seeks to enter the United States for the purpose of engaging in activities which will endanger the public safety, he must refuse to issue to such alien an immigration visa or any other document entitling the alien to present himself for admission into the country. However, if the alien succeeds in concealing such purpose from the diplomatic or consular officer and obtains a visa or other travel document, he cannot legally be denied admission on the ground of his purpose after he reaches the United States.

The bill under consideration would correct this apparent deficiency in the immigration laws, and, subject to the following suggestion, the Department recommends its enactment.

The bill provides for the insertion of its amending clause before specific language contained in section 3 of the act of February 5, 1917 (39 Stat. 875), which language does not appear to have been retained verbatim in the acts of October 16, 1918 (40 Stat. 1012), June 5, 1920 (41 Stat. 1008), or subsequent acts, which have been codified under 8 U. S. C. 137, relating to the exclusion of anarchists and similar classes of undesirable aliens.

For purpose of clarity in construction, therefore, it is suggested that the bill be amended after its enacting clause to read as follows:

> "That section 1 of the act of June 5, 1920 (41 Stat. 1008), as amended, is further amended by inserting the following clause immediately after the clause 'Aliens who are anarchists': 'or persons who the Attorney General knows or has reason to believe seek to enter the United States for the purpose of engaging in activities which will endanger the public safety of the United States.' "

The Director of the Bureau of the Budget has advised that there is no objection to the submission of this report.

Sincerely yours,

DOUGLAS W. MCGREGOR,
The Assistant to the Attorney General.

The committee after consideration of all the facts is of the opinion that the bill (H. R. 1878), as amended, should be enacted and it therefore accordingly so recommends its enactment.

Proclamation No. 2523

CONTROL OF PERSONS ENTERING AND LEAVING THE UNITED STATES

By the President of the United States of America

A Proclamation

Whereas the act of Congress approved on May 22, 1918 (40 Stat. 559), as amended by the act of Congress approved on June 21, 1941 (Public Law 114, 77th Cong., chap. 210, 1st sess., 55 Stat. 252)[1] vests authority in me to impose restrictions and prohibitions in addition to those otherwise provided by law upon the departure of persons from and their entry into the United States when the United States is at war, or during the existence of the national emergency proclaimed by the President on May 27, 1941, or, as to aliens, whenever there exists a state of war between or among two or more states, and when I find that the interests of the United States so require; and

Whereas the national emergency proclaimed by me on May 27, 1941 is still existing; and

Whereas there unhappily exists a state of war between or among two or more states and open hostilities engage a large part of the Eastern Hemisphere; and

Whereas the exigencies of the present international situation and of the national defense require that restrictions and prohibitions, in addition to those otherwise provided by law, be imposed upon the departure of persons from and their entry into the United States, including the Panama Canal Zone, the Commonwealth of the Philippines, and all territory and waters, continental or insular, subject to the jurisdiction of the United States:

NOW, THEREFORE, I, FRANKLIN D. ROOSEVELT, President of the United States of America, acting under and by virtue of the authority vested in me as set forth above, do hereby find and publicly proclaim and declare that the interests of the United States require that restrictions and prohibitions, in addition to those otherwise provided by law, shall be imposed upon the departure of persons from and their entry into the United States, including the Panama Canal Zone, the Commonwealth of the Philippines, and all territory and waters, continental or insular, subject to the jurisdiction of the United States; and I make the following rules, regulations, and orders which shall remain in force and effect until otherwise ordered by me:

(1) After the effective date of the rules and regulations hereinafter authorized, no citizen of the United States or person who owes allegiance to the United States shall depart from or enter, or attempt to depart from or enter, the United States, including the Panama Canal Zone, the Commonwealth of the Philippines, and all territory and waters, continental or insular, subject to the jurisdiction of the United States, unless he bears a valid passport issued by the Secretary of State or, under his authority, by a diplomatic or consular officer of the United States, or the United States High Commissioner to the Philippine Islands, or the chief executive of Hawaii, of Puerto Rico, of the Virgin Islands, of American Samoa, or of Guam, or unless he comes within the provisions of such exceptions or fulfils such conditions as may be prescribed in rules and regulations which the Secretary of State is hereby authorized to prescribe in execution of the rules, regulations, and orders herein prescribed. Seamen are included in the classes of persons to whom this paragraph applies.

(2) No alien shall depart from or attempt to depart from the United States unless he is in possession of a valid permit to depart issued by the Secretary of State or by an officer

designated by the Secretary of State for such purpose, or unless he is exempted from obtaining a permit, in accordance with rules and regulations which the Secretary of State, with the concurrence of the Attorney General, is hereby authorized to prescribe in execution of the rules, regulations, and orders herein prescribed; nor shall any alien depart from or attempt to depart from the United States at any place other than a port of departure designated by the Attorney General or by the Commissioner of Immigration and Naturalization or by an appropriate permit-issuing authority designated by the Secretary of State.

No alien shall be permitted to depart from the United States if it appears to the satisfaction of the Secretary of State that such departure would be prejudicial to the interests of the United States as provided in the rules and regulations hereinbefore authorized to be prescribed by the Secretary of State, with the concurrence of the Attorney General.

(3) After the effective date of the rules and regulations hereinafter authorized, no alien shall enter or attempt to enter the United States unless he is in possession of a valid unexpired permit to enter issued by the Secretary of State, or by an appropriate officer designated by the Secretary of State, or is exempted from obtaining a permit to enter in accordance with the rules and regulations which the Secretary of State, with the concurrence of the Attorney General, is hereby authorized to prescribe in execution of these rules, regulations, and orders.

No alien shall be permitted to enter the United States if it appears to the satisfaction of the Secretary of State that such entry would be prejudicial to the interests of the United States as provided in the rules and regulations hereinbefore authorized to be prescribed by the Secretary of State, with the concurrence of the Attorney General.

(4) No person shall depart from or enter, or attempt to depart from or enter, the United States without submitting for inspection, if required to do so, all documents, articles, or other things which are being removed from or brought into the United States upon or in connection with such person's departure or entry, which are hereby made subject to official inspection under rules and regulations which the Secretary of State in the cases of citizens, and the Secretary of State with the concurrence of the Attorney General in the cases of aliens, is hereby authorized to prescribe.

(5) A permit to enter issued to an alien seaman employed on a vessel arriving at a port in the United States from a foreign port shall be conditional and shall entitle him to enter only in a case of reasonable necessity in which the immigration authorities are satisfied that such entry would not be contrary to the interests of the United States; but this shall not be deemed to supersede the provisions of Executive Order 8429, dated June 5, 1940 concerning the documentation of seamen.

(6) The period of validity of a permit to enter or a permit to depart, issued to an alien, may be terminated by the permit-issuing authority or by the Secretary of State at any time prior to the entry or departure of the alien, provided the permit-issuing authority or the Secretary of State is satisfied that the entry or departure of the alien would be prejudicial to the interests of the United States which it was the purpose of the above-mentioned acts to safeguard.

(7) Except as provided herein or by rules and regulations prescribed hereunder, the provisions of this proclamation and the rules and regulations issued in pursuance hereof shall be in addition to, and shall not be held to repeal, modify, suspend, or supersede any proclamation, rule, regulation, or order heretofore issued and now in effect under the general statutes relating to the immigration of aliens into the United States; and compliance with the provisions of this proclamation or of any rule or regulation which may hereafter be issued in pursuance of the act of May 22, 1918, as amended by the act of June 21, 1941, shall not be considered as exempting any individual from the duty of complying with the provisions of any statute, proclamation, rule, regulation, or order heretofore issued and now in effect.

(8) I direct all departments and agencies of the Government to cooperate with the Secretary of State in the execution of his authority under this proclamation and any subsequent proclamation, rule, regulation, or order promulgated in pursuance hereof. They shall upon request make available to the Secretary of State for that purpose the services of their respective officials and agents. I enjoin upon all officers of the United States charged with the execution of the laws thereof the utmost diligence in preventing violations of the act of May 22, 1918, as amended by the act of June 21, 1941, and in bring to trial and punishment any persons who shall have violated any provisions of such acts.

(9) Paragraph 6, part I, of Executive Order 8766, issued June 3, 1941, is hereby superseded by the provisions of this proclamation and such regulations as may be prescribed hereunder.

IN WITNESS WHEREOF, I have hereunto set my hand and caused the seal of the United States of America to be affixed.

DONE at the city of Washington this 14th day of November in the year of our Lord nineteen hundred and forty-one, and of the Independence of the United States of America the one hundred and sixty-sixth.

[SEAL]

By the President: FRANKLIN D. ROOSEVELT

CORDELL HULL,

Secretary of State.

Proclamation No. 2714

(12 F. R. 1)

CESSATION OF HOSTILITIES OF WORLD WAR II

BY THE PRESIDENT OF THE UNITED STATES OF AMERICA

A PROCLAMATION

With God's help this nation and our allies, through sacrifice and devotion, courage and perseverance, wrung final and unconditional surrender from our enemies. Thereafter, we, together with the other United Nations, set about building a world in which justice shall replace force. With spirit, through faith, with a determination that there shall be no more wars of aggression calculated to enslave the peoples of the world and destroy their civilization, and with the assistance of Almighty Providence great gains have been made in translating military victory into permanent peace. Although a state of war still exists, it is at this time possible to declare, and I find it to be in the public interest to declare, that hostilities have terminated.

NOW, THEREFORE, I, HARRY S. TRUMAN, President of the United States of America, do hereby proclaim the cessation of hostilities of World War II, effective twelve o'clock noon, December 31, 1946.

IN WITNESS WHEREOF, I have hereunto set my hand and caused the seal of the United States of America to be affixed.

DONE at the City of Washington this 31st day of December in the year of our Lord nineteen hundred and forty-six,

and of the Independence of the United States of America the one hundred and seventy-first.

[SEAL]

By the President: HARRY S. TRUMAN.

JAMES F. BYRNES,

The Secretary of State.

Proclamation No. 2850

AMENDMENT OF PROCLAMATION NO. 2523 PRESCRIBING REGULATIONS RELATING TO THE CONTROL OF PERSONS ENTERING OR LEAVING THE UNITED STATES

BY THE PRESIDENT OF THE UNITED STATES OF AMERICA
A PROCLAMATION

WHEREAS Proclamation No. 2523 of November 14, 1941, issued under and by virtue of the authority vested in the President by the act of May 22, 1918, 40 Stat. 559, as amended by the act of June 21, 1941, 55 Stat. 252, prescribes regulations which impose certain restrictions and prohibitions, in addition to those otherwise provided by law, upon the departure of persons from and their entry into the United States; and

WHEREAS I find that the interests of the United States, within the meaning of the said act of June 21, 1941, and by reason of the continued existence of the conditions set forth in section 1 thereof, require that the said proclamation be amended as hereinafter set forth:

NOW THEREFORE, I, HARRY S. TRUMAN, President of the United States of America, acting under and by virtue of

the authority vested in the President by the Act of Congress above mentioned, do proclaim as follows:

1. The said Proclamation No. 2523 is hereby amended so that paragraph numbered (3) thereof, together with the succeeding unnumbered paragraph, shall read as follows:

"(3) (a) After the effective date of the rules and regulations hereinafter authorized, no alien shall enter or attempt to enter the United States unless he is in possession of a valid unexpired permit to enter issued by the Secretary of State or by an appropriate officer designated by the Secretary of State, or is exempted from obtaining a permit to enter, in accordance with rules and regulations which the Secretary of State, with the concurrence of the Attorney General, is hereby authorized to prescribe.

"(b) No permit to enter shall be issued to an alien if it appears to the satisfaction of the issuing officer, or the Secretary of State, that the alien's entry would be prejudicial to the interests of the United States within the meaning of the rules and regulations hereinbefore authorized to be prescribed by the Secretary of State with the concurrence of the Attorney General.

"(c) Notwithstanding the provisions of the foregoing paragraphs (a) and (b), no alien applying for admission, even with a valid permit to enter, shall enter or be permitted to enter the United States if it appears to the satisfaction of the Attorney General that such entry would be prejudicial to the interests of the United States."

2. All existing regulations promulgated under or pursuant to the said Proclamation No. 2523 are hereby ratified and confirmed and shall be construed to have the same effect as if included in such proclamation: *Provided, however,* that nothing contained herein shall be deemed to limit lawful authority to amend or modify such regulations.

IN WITNESS WHEREOF, I have hereunto set my hand and caused the Seal of the United States of America to be affixed.

DONE at the City of Washington this 17th day of August in the year of our Lord nineteen hundred and forty-nine, and of the Independence of the United States of America, the one hundred and seventy-fourth.

[SEAL] HARRY S. TRUMAN

By the President:

DEAN ACHESON,
Secretary of State.

Code of Federal Regulations (C. F. R.)

§175.53 TITLE 8—ALIENS AND NATIONALITY

§175.53 *Classes of aliens whose entry is deemed to be prejudicial to the public interest.* The entry of an alien who is within one of the following categories shall be deemed to be prejudicial to the interests of the United States for the purpose of §§175.41 to 175.63, inclusive:

(a) Any alien who belongs to one of the classes specified in the act of October 16, 1918, as amended. (40 Stat. 1012, 41 Stat. 1008-9, 54 Stat. 673; 8 U. S. C. 137)

(b) Any alien who is a member of, affiliated with, or may be active in the United States in connection with or on behalf of a political organization associated with or carrying out policies of any foreign government opposed to the measures adopted by the Government of the United States in the public interest, or in the interest of national defense, or in the interest of the common defense of the countries f the Western Hemisphere, or in the prosecution of the war.

(c) Any alien in possession of, or seeking to procure, unauthorized secret information concerning the plans, preparations, equipment, or establishments for the national defense of, or the prosecution of the war by, the United States.

(d) Any alien engaged in activities designed to obstruct, impede, retard, delay, or counteract the effectiveness of the measures adopted by the Government of the United States for the defense of the United States or for the defense of any other country, or the prosecution of the war.

(e) Any alien engaged in activities designed to obstruct, impede, retard, delay, or counteract the effectiveness of any plans made or steps taken by any country of the Western Hemisphere in the interest of the common defense of the countries of such Hemisphere.

(f) Any alien engaged in organizing, teaching, advocating, or directing any rebellion, insurrection, or violent uprising against the United States.

(g) Any alien engaged in a plot or plan to destroy materials, or sources thereof, vital to the defense of, or the prosecution of the war by, the United States, or to the effectiveness of the measures adopted by the United States for the defense of any other country.

(h) Any alien whose admission would endanger the public safety, as provided in any Executive order issued in pursuance of the act of Congress approved June 20, 1941 (ch. 209, 55 Stat. 252; 22 U. S. C., Sup., 228, 229).

(i) Any alien enemy: *Provided*, That this excluding provision shall not apply to aliens who

(1) Present valid permits to enter issued on or after November 14, 1941, or are exempted under these regulations

from presenting permits to enter and are found to be otherwise admissible under §§ 175.41 to 175.63, inclusive; or

(2) Before September 1, 1939, became and still are citizens or subjects of any foreign country at war with Japan and who have not, since September 1, 1939, and before May 8, 1945, returned to any enemy or enemy-controlled territory; or

(3) Are under 14 years of age; or

(4) Are excepted from the excluding provisions of this subsection in the discretion of the permit-issuing authority or of the Secretary of State.

(j) Any alien found to be, or charged with being, a war criminal by the appropriate authorities of the United States or one of its co-belligerents, or an alien who has been guilty of, or who has advocated or acquiesced in activities or conduct contrary to civilization and human decency on behalf of the Axis countries during the present World War.

(k) Any alien who is not within one or more of the classes defined in paragraphs (a) to (j), inclusive, but in whose case circumstances of a similar character may be found to exist, which render the alien's admission prejudicial to the interests of the United States, which it was the purpose of the act of June 21, 1941 (55 Stat. 252; 22 U. S. C., Sup., 223) to safeguard.

§ 175.54 *Aliens leaving close relatives in certain foreign countries.* The fact that a spouse, or a relative of the first degree of consanguinity, with whom an applicant has maintained close family ties, remains abroad in any country, or in territory under the direct or indirect control of any country, the government of which is found by the Secretary of State to have adopted measures or policies contrary to

the measures or policies adopted by the Government of the United States in the interest of national or international security, may be considered with other evidence in determining whether such applicant may be granted a permit to enter or whether the entry of such applicant should be denied upon the ground that the applicant is within one or more of the categories set forth in § 175.53.

§ 175.55 *Permission to enter the Canal Zone, Guam, American Samoa, and the Philippine Islands.* In addition to the classes of aliens prohibited from entering the United States under the provisions of this chapter, the chief executive officers of the Canal Zone, Guam, American Samoa, and the Philippine Islands are authorized to prescribe, with the approval of the Secretary of State and the Attorney General, additional prohibited classes for the areas under their jurisdiction, and such officers are authorized to issue under the same conditions such regulations as they may deem to be necessary to carry out the provisions of this chapter, including any modifications of a substantive or procedural character.

CROSS REFERENCES: For regulations relating to the control of aliens entering the Canal Zone, issued by the Governor of the Panama Canal, approved by the Secretary of State and by the Attorney General, see Title 35, CFR, 1945, Supp., Part 30.

§ 175.56 *Aliens traveling through areas of military operations or occupation.* In addition to all other applicable restrictions and requirements, in the case of an alien who desires to proceed to the United States and who intends to proceed thereafter to or through any area designated as an area of active military operations or occupation, application shall be made for any military permit required for travel to or through such area. Such application must be approved before a permit to enter is granted.

§ 175.57 *Entry not permitted in special cases.* (a) Any alien, even though in possession of a permit to enter, or exempted under §§ 175.41 to 175.63, inclusive, from obtaining a permit to enter, may be excluded temporarily if at the time he applies for admission at a port of entry it appears that he is or may be excludable under one of the categories set forth in § 175.53. The official excluding the alien shall immediately report the facts to the head of his department, who will communicate such report to the Secretary of State. Any alien so temporarily excluded by an official of the Department of Justice shall not be admitted and shall be excluded and deported unless the Attorney General, after consultation with the Secretary of State, is satisfied that the admission of the alien would not be prejudicial to the interests of the United States. Any alien so temporarily excluded by any other official shall not be admitted and shall be excluded and deported unless the Secretary of State is satisfied that the admission of the alien would not be prejudicial to the interests of the United States.

(b) In the case of an alien temporarily excluded by an official of the Department of Justice on the ground that he is, or may be excludable under one or more of the categories set forth in § 175.53, no hearing by a board of special inquiry shall be held until after the case is reported to the Attorney General and such a hearing is directed by the Attorney General or his representative. In any special case the alien may be denied a hearing before a board of special inquiry and an appeal from the decision of that board if the Attorney General determines that he is excludable under one of the categories set forth in § 175.53 on the basis of information of a confidential nature, the disclosure of which would be prejudicial to the public interest.

APPENDIX II

Order

RECENT DECISION OF JUDGE HOLLAND, FLORIDA, INTERPRETING 8 C. F. R. 175, 57.

IN THE

DISTRICT COURT OF THE UNITED STATES

FOR THE SOUTHERN DISTRICT OF FLORIDA,

MIAMI DIVISION.

No. 2712-M—Civil

In the Matter of the Application of
JOHN IVAN VISIC

For a writ of Habeas Corpus:

FRANCIS J. H. DEVER, Officer in Charge, Miami Office—Immigration and Naturalization Service,
Respondent.

This case is before the Court on the Petitioner's motion for a Better Statement.

The Federal Regulation Part 175.57, Title 8, Code of Federal Regulations, does not justify the Attorney General to make the order contained in the return to the order to show cause. The Presidential Proclamation No. 2523 of November 14, 1941, requires the order to be made by the

Secretary of State. The concurrence of the Attorney General in rules and regulations prescribed by the Secretary of State, does not justify the action of the Attorney General under the said Regulation 175.57.

The motion is granted. Ten days are allowed for compliance.

DONE AND ORDERED at Miami, Florida, this 24th day of November, 1948.

United States District Judge.
JOHN W. HOLLAND,

Final Judgment and Order

IN THE

DISTRICT COURT OF THE UNITED STATES

FOR THE SOUTHERN DISTRICT OF FLORIDA,

MIAMI DIVISION.

No. 2712-M—Civil

In the Matter of the Application of
JOHN IVAN VISIC

For a writ of Habeas Corpus:

FRANCIS J. H. DEVER, Officer in Charge, Miami Office—Immigration and Naturalization Service,
Respondent.

The above cause coming to be heard before me in open court and petitioner having appeared by his attorneys and respondent having appeared in person and by his attorneys and petitioner's oral motion to strike respondent's motion for rehearing on petitioner's motion for better statement having been granted and respondent having declined and refused to produce the official records of the Department of Justice concerning petitioner's exclusion under Part 175.57 Title 8 Code of Federal Regulations on the ground that said records of the Department of Justice were confidential and that their production was forbidden by Department of Justice order No. 3229 of May 2, 1939 and I having issued a writ of habeas corpus and said writ having been duly served upon respondent and respondent having waived any waiting period required or permitted by statute for his response to said writ and respondent having declined to produce the

aforesaid official records relating to petitioner's exclusion on the same aforesaid grounds and respondent having proffered evidence to support and prove the allegations in his return to the order to show cause, it is hereby

ORDERED that respondent be restrained from deporting petitioner from the United States under the exclusion proceedings had under the aforesaid Pa 175.53 and Part 175.57 and that such proceedings be terminated forthwith, and it is further

ORDERED that petitioner be remanded into the custody of the respondent for consideration of petitioner's application for admission to the United States in accordance with the procedure prescribed by Section 16 and Section 17 of the Immigration Act of February 5, 1917 (8 U. S. C. 152 and 153) and regulations made pursuant thereto, and it is further

ORDERED that respondent, pending final determination of petitioner's application for admission to the United States as aforestated shall release petitioner upon petitioner's furnishing bond in the sum of Five Hundred Dollars ($500.00) with good and sufficient sureties as required by law and regulation, conditioned to insure petitioner's appearance in the above proceedings in connection with his application for admission and for his appearance for deportation should that be finally ordered and further conditioned that respondent shall during the pendency of those proceedings remain within the confines of the Southern Judicial District of Florida.

DONE AND ORDERED in Chambers of United States Court House in the City of Miami, County of Dade and State of Florida this 7th day of December, A.D. 1948.

JOHN W. HOLLAND,
U. S. District Judge.

Opinion of the Attorney General of the United States

NATURALIZATION. PROOF OF ENTRY FOR PERMANENT RESIDENCE.

Under section 312 of the Nationality Act of 1940, proof of legal entry for permanent residence is a condition precedent to naturalization of an alien spouse of an American citizen who is abroad in the employment of the Government.

MAY 26, 1941.

The Secretary of State.

MY DEAR MR. SECRETARY: Reference is made to your communication of April 23, 1941, requesting my opinion "whether an alien spouse of a citizen of the United States who is abroad in the employment of the Government of the United States is required under section 312 of the Nationality Act of 1940 to prove that he or she legally entered the United States for permanent residence under the immigration laws of the United States as a condition precedent to naturalization." The Nationality Act of 1940 (Public, No. 853, 76th Cong.) provides in section 301 (d) that "a person may be naturalized as a citizen of the United States in the manner and under the conditions prescribed in this act, and not otherwise." Other provisions of the act specify certain general requirements with which all aliens not exempt therefrom must comply as a prerequisite to naturalization. Among these general requirements are (1) the filing in the prescribed manner of a declaration of intention to become a citizen of the United States, (2) the filing in a court of competent jurisdiction of a petition for naturalization, (3) proof of legal entry in the United States for permanent residence, and (4) proof of prescribed periods of residence within the United States and within the jurisdiction of the court before which the naturalization proceeding is pending. See section 332, paragraphs 9, 11, 13, and 14.

Section 312 of the act reads in pertinent part:

"An alien whose spouse is (1) a citizen of the United States, (2) in the employment of the Government of the United States, * * * and (3) regularly stationed abroad in such employment, and who is (1) in the United States at the time of naturalization, and (2) declares before the naturalization court in good faith an intention to take up residence within the United States immediately upon termination of such employment abroad of the citizen spouse, *may be naturalized upon compliance with all requirements of the naturalization laws, with the following exceptions*:

"(a) No declaration of intention shall be required; and

"(b) No prior residence within the United States or within the jurisdiction of the naturalization court or proof thereof shall be required." (Italics supplied.)

Section 312 is one of seventeen sections of the Nationality Act of 1940 dealing with the naturalization of special classes of aliens. Each of these sections prescribes how persons mentioned in it may be naturalized, expressly exempting them, wholly or in part, from compliance with one or more of the general requirements for naturalization.

Some of these sections expressly exempt persons named in them from the requirement, among others, to prove legal entry in the United States for permanent residence. For example, section 317 expressly exempts persons mentioned in it from that requirement and also from the requirements (1) to file declaration of intention to become a citizen and (2) to prove the statutory periods of residence within the United States and within the jurisdiction of the court. Section 312 also expressly exempts persons named in it from the two requirements last mentioned but does not so exempt them from the other. It is believed that if the Congress had

intended to extend that exemption to them it would have done this also by express language. See *United States* v. *Manzi*, 276 U. S. 463.

Of significance, also, is the fact that alien spouses of citizens other than those mentioned in section 312 are not exempted from the requirement here in question. The other exemptions in section 312 being expressly granted, it is my opinion that the implied grant to spouses of one class of citizens of an exemption not granted to those of other classes should not be read into the section unless the purpose to grant it appears by clear implication. I find no such implication.

Attention is also invited to the regulations issued under the statute by this Department on January 9, 1941 (see Federal Register, issue of January 11, 1941, pp. 230 *et seq.*), which show an administrative interpretation in accord with the above view. Section 363.4 of these regulations in naming the classes of persons who may be naturalized without filing certificates of entry in the United States for permanent residence does not include persons mentioned in section 312.

For the reasons given, it is my opinion that ~~an~~ alien spouse of a citizen of the United States who is abroad in the employment of the Government of the United States is required to prove that he or she legally entered the United States for permanent residence under the immigration laws of the United States as a condition precedent to naturalization. It is not necessary, of course, that the entry be for *immediate* permanent residence, since the statute permits naturalization upon a declaration made in good faith of an "intention to take up residence within the United States immediately upon termination of such employment abroad of the citizen spouse."

Respectfully,

ROBERT H. JACKSON.